

109TH CONGRESS
1ST SESSION

S. 1421

To enhance resources to enforce United States trade rights.

IN THE SENATE OF THE UNITED STATES

JULY 19, 2005

Ms. COLLINS introduced the following bill; which was read twice and referred
to the Committee on Finance

A BILL

To enhance resources to enforce United States trade rights.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “United States Trade
5 Rights Enforcement Act”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

8 (1) United States producers that believe they
9 are injured by subsidized imports from nonmarket
10 economy countries have not been able to obtain relief
11 through countervailing duty actions because the De-
12 partment of Commerce has declined to make coun-

1 countervailing duty determinations for nonmarket econ-
2 omy countries in part because it lacks explicit legal
3 authority to do so;

4 (2) explicitly making the countervailing duty
5 law under subtitle A of title VII of the Tariff Act
6 of 1930 (19 U.S.C. 1671 et seq.) applicable to ac-
7 tions by nonmarket economy countries would give
8 United States producers access to import relief
9 measures that directly target government subsidies;

10 (3) the Bureau of Customs and Border Protec-
11 tion of the Department of Homeland Security has
12 encountered particular problems in collecting coun-
13 tervailing and antidumping duties from new shippers
14 who default on their bonding obligations;

15 (4) this behavior may detract from the ability
16 of United States companies to recover from competi-
17 tion found to be unfair under international trade
18 laws;

19 (5) accordingly, it is appropriate, for a test pe-
20 riod, to suspend the availability of bonds for new
21 shippers and instead require cash deposits;

22 (6) more analysis and assessment is needed to
23 determine the appropriate policy to respond to this
24 and other problems experienced in the collection of
25 duties and the impact that policy changes could have

1 on legitimate United States trade and United States
2 trade obligations;

3 (7) given the developments in the ongoing
4 World Trade Organization (WTO) negotiations re-
5 lating to trade remedies, Congress reiterates its re-
6 solve as expressed in House Concurrent Resolution
7 262 (107th Congress), which was overwhelmingly
8 approved by the House of Representatives on No-
9 vember 7, 2001, by a vote of 410 to 4;

10 (8) the United States Trade Representative
11 should monitor compliance by United States trading
12 partners with their trade obligations and systemati-
13 cally identify areas of noncompliance;

14 (9) the United States Trade Representative
15 should then aggressively resolve noncompliance
16 through consultations with United States trading
17 partners;

18 (10) however, should efforts to resolve disputes
19 through consultation fail, the United States Trade
20 Representative should vigorously pursue United
21 States rights through dispute settlement in every
22 available forum;

23 (11) given the huge growth in trade with the
24 People's Republic of China, its impact on the United
25 States economy, and the complaints voiced by many

1 United States interests that China is not complying
2 with its international trade obligations, the United
3 States Trade Representative should place particular
4 emphasis on identifying and resolving disputes with
5 China that limit United States exports, particularly
6 concerning compliance with obligations relating to
7 intellectual property rights and enforcement, tariff
8 and nontariff barriers, subsidies, technical barriers
9 to trade, sanitary and phytosanitary issues, non-
10 market-based industrial policies, distribution rights,
11 and regulatory transparency;

12 (12) in addition, the United States Trade Rep-
13 resentative should place particular emphasis on
14 trade barriers imposed by Japan, specifically the
15 Japanese trade ban on United States beef without
16 scientific justification, the Japanese sanitary and
17 phytosanitary restrictions on United States agricul-
18 tural products, Japanese policies on pharmaceutical
19 and medical device reference pricing, insurance
20 cross-subsidization, and privatization in a variety of
21 sectors that discriminate against United States com-
22 panies;

23 (13) the fixed exchange rate that the People's
24 Republic of China currently maintains is a substan-
25 tial distortion to world markets, blocking the price

1 mechanism and impeding adjustment of inter-
2 national imbalances, and it is also a source of large
3 and increasing risk to the Chinese economy;

4 (14) the People's Republic of China has com-
5 pleted significant preparations over the last two
6 years for adoption of a more flexible, market-ori-
7 ented exchange rate;

8 (15) the People's Republic of China is now
9 ready to move to a more flexible exchange rate and
10 it should move to such an exchange rate as soon as
11 possible;

12 (16) the Secretary of the Treasury, in the an-
13 nual report reviewing developments in international
14 economic policy, including exchange rate policy,
15 under the Omnibus Trade and Competitiveness Act
16 of 1988, appropriately concluded that "current Chi-
17 nese policies are highly distortionary and pose a risk
18 to China's economy, its trading partners, and global
19 economic growth";

20 (17) moreover, the rapid growth of credit and
21 very high rate of investment risk undermine the
22 progress that the People's Republic of China has
23 made in reforming its banking system by creating
24 new flows of non-performing loans;

1 (18) such behavior effectively prevents market
2 forces from operating efficiently in the People's Re-
3 public of China, which distorts world trade;

4 (19) furthermore, based on the fact that the
5 Secretary of the Treasury has determined the cur-
6 rency policy of the People's Republic of China to be
7 “distortionary”, the United States Trade Represent-
8 ative and the Secretary of the Treasury should place
9 particular emphasis on determining whether China is
10 violating its international obligations and identify to
11 Congress the actions it is taking to address distor-
12 tions to world trade;

13 (20) in addition, Japan's policy of intervening
14 to influence the value of its currency and its prolific
15 barriers to trade create distortions that disadvantage
16 United States exporters;

17 (21) this adverse impact is magnified by Ja-
18 pan's role in the global marketplace, combined with
19 its chronic surplus, weak economy, deflationary
20 economy, low growth rate, and lack of consumer
21 spending; and

22 (22) accordingly, the United States Trade Rep-
23 resentative should have additional resources in the
24 Office of the General Counsel, the Office of Moni-
25 toring and Enforcement, the Office of China Affairs,

1 and the Office of Japan, Korea, and APEC Affairs
 2 to address a variety of needs that will best enable
 3 United States companies, farmers, and workers to
 4 benefits from the trade agreements to which the
 5 United States has around the world.

6 **SEC. 3. APPLICATION OF COUNTERVAILING DUTIES TO**
 7 **NONMARKET ECONOMY COUNTRIES.**

8 (a) AMENDMENTS.—

9 (1) COUNTERVAILING DUTIES IMPOSED.—Sec-
 10 tion 701(a)(1) of the Tariff Act of 1930 (19 U.S.C.
 11 1671(a)(1)) is amended by inserting “(including a
 12 nonmarket economy country)” after “country” each
 13 place it appears.

14 (2) DEFINITION OF COUNTERVAILABLE SUB-
 15 SIDY.—Section 771(5)(E) of such Act (19 U.S.C.
 16 1677(5)(E)) is amended by adding at the end the
 17 following new sentences: “With respect to the Peo-
 18 ple’s Republic of China, if the administering author-
 19 ity encounters special difficulties in calculating the
 20 amount of a benefit under clause (i), (ii), (iii), or
 21 (iv) of this subparagraph, the administering author-
 22 ity may use methodologies for identifying and meas-
 23 uring the subsidy benefit which take into account
 24 the possibility that prevailing terms and conditions
 25 in China may not always be available as appropriate

1 benchmarks. When applying such methodologies, the
2 administering authority should adjust such pre-
3 vailing terms and conditions before considering the
4 use of terms and conditions prevailing outside
5 China.”.

6 (b) PROHIBITION ON DOUBLE COUNTING.—In apply-
7 ing section 701(a)(1) of the Tariff Act of 1930, as amend-
8 ed by subsection (a), to a class or kind of merchandise
9 of a nonmarket economy country, the administering au-
10 thority shall ensure that—

11 (1) any countervailable subsidy is not double
12 counted in an antidumping order under section 731
13 of such Act (19 U.S.C. 1673) on the same class or
14 kind of merchandise of the country; and

15 (2) the application of section 701(a)(1) of such
16 Act is consistent with the international obligations of
17 the United States.

18 (c) EFFECTIVE DATE.—The amendments made by
19 subsection (a) apply to any petition filed under section 702
20 of the Tariff Act of 1930 (19 U.S.C. 1671a) on or after
21 30 days after the date of the enactment of this Act, and
22 the provisions contained in subsection (b) apply to any
23 subsequent determination made under section 733, 735,
24 or 751 of such Act (19 U.S.C. 1673b, 1673d, or 1675).

1 **SEC. 4. NEW SHIPPER REVIEW AMENDMENT.**

2 (a) SUSPENSION OF THE AVAILABILITY OF BONDS
3 TO NEW SHIPPERS.—Clause (iii) of section 751(a)(2)(B)
4 of the Tariff Act of 1930 (19 U.S.C. 1675(a)(2)(B)(iii))
5 shall not be effective during the 3-year period beginning
6 on the date of the enactment of this Act.

7 (b) REPORT ON THE IMPACT OF THE SUSPENSION.—
8 Not later than 2 years after the date of the enactment
9 of this Act, the Secretary of the Treasury, in consultation
10 with the Secretary of Commerce, the United States Trade
11 Representative, and the Secretary of Homeland Security,
12 shall submit to the Committee on Finance of the Senate
13 and the Committee on Ways and Means of the House of
14 Representatives a report containing—

15 (1) recommendations on whether the suspension
16 of the effectiveness of section 751(a)(2)(B)(iii) of
17 the Tariff Act of 1930 should be extended beyond
18 the date provided in subsection (a) of this section;
19 and

20 (2) assessments of the effectiveness of any ad-
21 ministrative measures that have been implemented
22 to address the difficulties giving rise to the suspen-
23 sion under subsection (a) of this section, including—

24 (A) problems in assuring the collection of
25 antidumping duties on imports from new ship-
26 pers; and

1 (B) burdens imposed on legitimate trade
2 and commerce by the suspension of availability
3 of bonds to new shippers by reason of the sus-
4 pension under subsection (a).

5 (c) REPORT ON COLLECTION PROBLEMS AND ANAL-
6 YSIS OF PROPOSED SOLUTIONS.—

7 (1) REPORT.—Not later than 90 days after the
8 date of the enactment of this Act, the Secretary of
9 the Treasury, in consultation with the Commissioner
10 of the Bureau of Customs and Border Protection
11 and the Secretary of Commerce, shall submit to the
12 Committee on Ways and Means of the House of
13 Representatives and the Committee on Finance of
14 the Senate a report describing the major problems
15 experienced in the collection of duties, including
16 fraudulent activities intended to avoid payment of
17 duties, with an estimate of the total amount of un-
18 collected duties for the previous fiscal year and a
19 breakdown across product lines describing the rea-
20 sons duties were uncollected.

21 (2) RECOMMENDATIONS.—The report shall
22 make recommendations on additional actions to ad-
23 dress remaining problems related to duty collections
24 and, for each recommendation, provide an analysis
25 of how the recommendation would address the spe-

1 cific problem or problems cited and the impact that
 2 implementing the recommendation would have on
 3 international trade and commerce (including any ad-
 4 ditional costs imposed on United States businesses
 5 and whether the implementation of the revision is
 6 likely to violate any international trade laws).

7 **SEC. 5. COMPREHENSIVE MONITORING OF COMPLIANCE BY**
 8 **THE PEOPLE’S REPUBLIC OF CHINA WITH ITS**
 9 **INTERNATIONAL TRADE OBLIGATIONS.**

10 (a) INTELLECTUAL PROPERTY RIGHTS COMPLI-
 11 ANCE.—

12 (1) IN GENERAL.—In accordance with the
 13 terms of the Agreement of WTO Accession for the
 14 People’s Republic of China, subsequent agreements
 15 by Chinese authorities through the U.S.-China Joint
 16 Commission on Commerce and Trade (JCCT), and
 17 other obligations by Chinese officials related to its
 18 trade obligations, the United States Trade Rep-
 19 resentative and the Secretary of Commerce shall un-
 20 dertake to ensure that the Government of the Peo-
 21 ple’s Republic China has taken the following steps:

22 (A) The Chinese Government has increased
 23 the number of civil and criminal prosecutions of
 24 intellectual property rights violators by the end
 25 of 2005 to a level that significantly decreases

1 the current amount of infringing products for
2 sale within China.

3 (B) China's Supreme People's Court, Su-
4 preme People's Procuratorate, and Ministry of
5 Public Security have issued draft guidelines for
6 public comment to ensure the timely referral of
7 intellectual property rights violations from ad-
8 ministrative bodies to criminal prosecution.

9 (C) The Chinese Ministry of Public Secu-
10 rity and the General Administration of Customs
11 have issued regulations to ensure the timely
12 transfer of intellectual property rights cases for
13 criminal investigation.

14 (D) The Chinese Ministry of Public Secu-
15 rity has established a leading group responsible
16 for overall research, planning, and coordination
17 of all intellectual property rights criminal en-
18 forcement to ensure a focused and coordinated
19 nationwide enforcement effort.

20 (E) The Chinese Government has estab-
21 lished a bilateral intellectual property rights law
22 enforcement working group in cooperation with
23 the United States whose members will cooper-
24 ate on enforcement activities to reduce cross-
25 border infringing activities.

1 (F) The Chinese Government has aggres-
2 sively countered movie piracy by dedicating en-
3 forcement teams to pursue enforcement actions
4 against pirates and has regularly instructed en-
5 forcement authorities nationwide that copies of
6 films and audio-visual products still in censor-
7 ship or import review or otherwise not yet au-
8 thorized for distribution are deemed pirated and
9 subject to enhanced enforcement.

10 (G) By the end of 2005, the Chinese Gov-
11 ernment has completed its legalization program
12 to ensure that all central, provincial, and local
13 government offices are using only licensed soft-
14 ware and by the end of 2006 has extended the
15 program to enterprises (including state-owned
16 enterprises).

17 (H) The Chinese Government, having de-
18 clared that software end-user piracy is consid-
19 ered to constitute “harm to the public interest”
20 and as such will be subject to administrative
21 penalties nationwide, has initiated civil and
22 criminal prosecutions of software end-user vio-
23 lators.

24 (I) The Chinese Government has appointed
25 an Intellectual Property Rights Ombudsman at

1 the Chinese Embassy in Washington, D.C., to
2 serve as the point of contact for United States
3 companies, particularly small- and medium-
4 sized businesses, seeking to secure and enforce
5 their intellectual property rights in China or ex-
6 perienicing intellectual property rights problems
7 in China.

8 (J) The relevant Chinese agencies, includ-
9 ing the Ministry of Commerce, the China
10 Trademark Office, the State Intellectual Prop-
11 erty Office, and the National Copyright Admin-
12 istration of China have significantly improved
13 intellectual property rights enforcement at trade
14 shows and issued new regulations to achieve
15 this goal.

16 (K) Not later than June 30, 2006, the
17 Chinese State Council has submitted to the Na-
18 tional People's Congress the legislative package
19 needed for China to accede to the World Intel-
20 lectual Property Organization (WIPO) Internet
21 treaties.

22 (L) The Chinese Government has taken
23 steps to enforce intellectual property right laws
24 against Internet piracy, including through en-
25 forcement at Internet cafes.

1 (M) The Chinese Government, having con-
2 firmed that the criminal penalty thresholds in
3 the 2004 Judicial Interpretation are applicable
4 to sound recordings, has instituted civil and
5 criminal prosecutions against such violators.

6 (N) The Chinese Government has initiated
7 civil and criminal prosecutions against exporters
8 of infringing recordings.

9 (2) DISPUTE SETTLEMENT PROCEEDINGS IN
10 WTO.—If the President determines that the People’s
11 Republic of China has not met each of the obliga-
12 tions described in subparagraphs (A) through (N) of
13 paragraph (1) or taken steps that result in signifi-
14 cant improvements in protection of intellectual prop-
15 erty rights in accordance with its trade obligations,
16 then the President shall assign such resources as are
17 necessary to collect evidence of such trade agreement
18 violations for use in dispute settlement proceedings
19 against China in the World Trade Organization.

20 (b) ACCESS FOR EXPORTS OF UNITED STATES
21 GOODS.—In accordance with the terms of the Agreement
22 of WTO Accession for the People’s Republic of China, sub-
23 sequent agreements by Chinese authorities through the
24 U.S.-China Joint Commission on Commerce and Trade
25 (JCCT), and other obligations by Chinese officials related

1 to its trade obligations, the United States Trade Rep-
2 resentative and the Secretary of Commerce shall under-
3 take to ensure that the Government of the People's Re-
4 public of China has taken the following steps:

5 (1) China has taken steps to ensure that United
6 States products can be freely distributed in China,
7 including by approving a significant backlog of dis-
8 tribution license applications and by preparing a reg-
9 ulatory guide for businesses seeking to acquire dis-
10 tribution rights that expands on the guidelines an-
11 nounced in April 2005.

12 (2) Chinese officials have permitted all enter-
13 prises in China, including those located in bonded
14 zones, to acquire licenses to distribute goods
15 throughout China.

16 (3) The Chinese Government has submitted
17 regulations on management of direct selling to the
18 Chinese State Council for review and taken any ad-
19 ditional steps necessary to provide a legal basis for
20 United States direct sales firms to sell United States
21 goods directly to households in China.

22 (4) The Chinese Government has issued final
23 regulations on direct selling, including with respect
24 to distribution of imported goods and fixed location
25 requirements.

1 (c) ACCESS FOR EXPORTS OF UNITED STATES SERV-
 2 ICES.—In accordance with the terms of the Agreement of
 3 WTO Accession for the People’s Republic of China, subse-
 4 quent agreements by Chinese authorities through the
 5 U.S.-China Joint Commission on Commerce and Trade
 6 (JCCT), and other obligations by Chinese officials related
 7 to its trade obligations, the United States Trade Rep-
 8 resentative and the Secretary of Commerce shall under-
 9 take to ensure that the Government of the People’s Re-
 10 public of China has taken the following steps:

11 (1) The Chinese Government has convened a
 12 meeting of the U.S.-China Insurance Dialogue be-
 13 fore the end of 2005 to discuss regulatory concerns
 14 and barriers to further liberalization of the sector.

15 (2) The Chinese Government has made senior
 16 level officials available to meet under the JCCT In-
 17 formation Technology Working Group to discuss
 18 capitalization requirements, resale services, and
 19 other issues as agreed to by the two sides.

20 (d) ACCESS FOR UNITED STATES AGRICULTURE.—
 21 In accordance with the terms of the Agreement of WTO
 22 Accession for the People’s Republic of China, subsequent
 23 agreements by Chinese authorities through the U.S.-China
 24 Joint Commission on Commerce and Trade (JCCT), and
 25 other obligations by Chinese officials related to its trade

1 obligations, the United States Trade Representative and
2 the Secretary of Agriculture shall undertake to ensure that
3 the Government of the People's Republic of China has
4 taken the following steps:

5 (1) China has completed the regulatory ap-
6 proval process for a United States-produced corn
7 biotech variety.

8 (2) China's Administration of Quality Super-
9 vision, Inspection and Quarantine has implemented
10 the 2005 Memorandum of Understanding between
11 the United States and China designed to facilitate
12 cooperation on animal and plant health safety issues
13 and improve efforts to expand United States access
14 to China's markets for agricultural commodities.

15 (e) ACCOUNTING OF CHINESE SUBSIDIES.—In ac-
16 cordance with the terms of the Agreement of WTO Acces-
17 sion for the People's Republic of China, subsequent agree-
18 ments by Chinese authorities through the U.S.-China
19 Joint Commission on Commerce and Trade (JCCT), and
20 other obligations by Chinese officials related to its trade
21 obligations, the United States Trade Representative and
22 the Secretary of Commerce shall undertake to ensure that
23 the Government of the People's Republic of China has pro-
24 vided a detailed accounting of its subsidies to the World
25 Trade Organization by the end of 2005.

1 (f) REPORTS.—

2 (1) BIENNIAL REPORT.—Not later than six
3 months after the date of the enactment of this Act,
4 and every six months thereafter, the President
5 should transmit to the Committee on Ways and
6 Means of the House of Representatives and the
7 Committee on Finance of the Senate a report that
8 contains—

9 (A) a description of the specific steps
10 taken by the Government of the People's Re-
11 public of China to meet its obligations described
12 in subsections (a) through (e) of this section
13 (other than obligations described in subsections
14 (a)(1)(A) and (G), (b)(1), (c)(1), and (e));

15 (B) an analysis of the extent to which Chi-
16 nese officials are attempting in good faith to
17 meet such obligations; and

18 (C) a description of the actions, if any, the
19 President will take to obtain compliance by
20 China if the President determines that the Chi-
21 nese Government is failing to meet such obliga-
22 tions, including pursuing United States rights
23 under the dispute settlement provisions of the
24 World Trade Organization, as appropriate.

1 (2) MONTHLY REPORT.—Not later than 30
 2 days after the date of the enactment of this Act, and
 3 every 30 days thereafter, the President should trans-
 4 mit to the Committee on Ways and Means of the
 5 House of Representatives and the Committee on Fi-
 6 nance of the Senate a report that contains—

7 (A) a description of the specific steps
 8 taken by the Government of the People’s Re-
 9 public of China to meet its obligations described
 10 in subsections (a)(1)(A) and (G), (b)(1), (c)(1),
 11 and (e);

12 (B) an analysis of the extent to which Chi-
 13 nese officials are attempting in good faith to
 14 meet such obligations; and

15 (C) a description of the actions, if any, the
 16 President will take to obtain compliance by
 17 China if the President determines that the Chi-
 18 nese Government is failing to meet such obliga-
 19 tions, including pursuing United States rights
 20 under the dispute settlement provisions of the
 21 World Trade Organization, as appropriate.

22 **SEC. 6. REPORT ON CURRENCY MANIPULATION BY FOR-**
 23 **EIGN COUNTRIES.**

24 Not later than 60 days after the date of the enact-
 25 ment of this Act, the Secretary of the Treasury shall sub-

1 mit to the Committee on Ways and Means of the House
 2 of Representatives and the Committee on Finance of the
 3 Senate a report that—

4 (1) defines currency manipulation;

5 (2) describes actions of foreign countries that
 6 will be considered to be currency manipulation; and

7 (3) describes how statutory provisions address-
 8 ing currency manipulation by trading partners of the
 9 United States contained in, and relating to, section
 10 40 of the Bretton Woods Agreements Act (22
 11 U.S.C. 286y) and sections 3004 and 3005 of the Ex-
 12 change Rates and International Economic Policy Co-
 13 ordination Act of 1988 (22 U.S.C. 5304 and 5305)
 14 can be better clarified administratively to provide for
 15 improved and more predictable evaluation.

16 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS FOR THE OF-**
 17 **FICE OF THE UNITED STATES TRADE REP-**
 18 **RESENTATIVE.**

19 (a) AUTHORIZATION OF APPROPRIATIONS.—

20 (1) IN GENERAL.—Section 141(g)(1)(A) of the
 21 Trade Act of 1974 (19 U.S.C. 2171(g)(1)(A)) is
 22 amended by striking clauses (i) and (ii) and insert-
 23 ing the following:

24 “(i) \$44,779,000 for fiscal year 2006.

25 “(ii) \$47,018,000 for fiscal year 2007.”.

1 (2) RULE OF CONSTRUCTION.—The amendment
 2 made by paragraph (1) shall not be construed to af-
 3 fect the availability of funds appropriated pursuant
 4 to section 141(g)(1)(A) of the Trade Act of 1974 be-
 5 fore the date of the enactment of this Act.

6 (b) AUTHORIZATION OF APPROPRIATIONS FOR THE
 7 OFFICE OF THE GENERAL COUNSEL AND CERTAIN
 8 OTHER OFFICES.—There are authorized to be appro-
 9 priated to the Office of the United States Trade Rep-
 10 resentative for the appointment of additional staff in or
 11 enhanced activities by the Office of the General Counsel,
 12 the Office of Monitoring and Enforcement, the Office of
 13 China Affairs, and the Office of Japan, Korea, and APEC
 14 Affairs—

15 (1) \$4,000,000 for fiscal year 2006; and

16 (2) \$4,000,000 for fiscal year 2007.

17 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS FOR THE**
 18 **UNITED STATES INTERNATIONAL TRADE**
 19 **COMMISSION.**

20 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
 21 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C.
 22 1330(e)(2)(A)) is amended by striking clauses (i) and (ii)
 23 and inserting the following:

24 “(i) \$62,752,000 for fiscal year 2006.

25 “(ii) \$65,890,000 for fiscal year 2007.”.

1 (b) RULE OF CONSTRUCTION.—The amendment
2 made by subsection (a) shall not be construed to affect
3 the availability of funds appropriated pursuant to section
4 section 330(e)(2)(A) of the Tariff Act of 1930 before the
5 date of the enactment of this Act.

6 (c) STUDY AND REPORT ON TRADE AND ECONOMIC
7 RELATIONS WITH CHINA.—

8 (1) STUDY.—

9 (A) IN GENERAL.—The United States
10 International Trade Commission shall carry out
11 a comprehensive study on trade and economic
12 relations between the United States and the
13 People’s Republic of China which focuses on
14 China’s macroeconomic policy, including its
15 fixed exchange rate policy, the competitiveness
16 of its industries, the composition and nature of
17 its trade patterns, and the impact of these ele-
18 ments on the United States trade account, in-
19 dustry, competitiveness, and employment.

20 (B) REQUIREMENTS.—In carrying out the
21 study under subparagraph (A), the United
22 States International Trade Commission shall
23 undertake the following:

24 (i) An analysis of the United States
25 trade and investment relationship with

1 China, with a focus on the United States-
2 China trade balance and trends affecting
3 particular industries, products, and sectors
4 in agriculture, manufacturing, and serv-
5 ices. The analysis shall provide context for
6 understanding the U.S.-China trade and
7 investment relationship, by including infor-
8 mation regarding China's economic rela-
9 tionships with third countries and China's
10 changing policy regime and business envi-
11 ronment. The analysis shall include a focus
12 on United States-China trade in goods and
13 services, United States direct investment in
14 China, China's foreign direct investment in
15 the United States, and the relationship be-
16 tween trade and investment. The analysis
17 shall make adjustments, where possible, for
18 merchandise passed through Hong Kong.

19 (ii) An analysis of the competitive
20 conditions in China affecting United States
21 exports and United States direct invest-
22 ment. The analysis shall take into account,
23 to the extent feasible, significant factors
24 including tariffs and non-tariff measures,
25 competition from Chinese domestic firms

1 and foreign-based companies operating in
2 China, the Chinese regulatory environ-
3 ment, including specific regulations and
4 overall regulatory transparency, and other
5 Chinese industrial and financial policies. In
6 addition, the analysis shall examine the
7 specific competitive conditions facing
8 United States producers in key industries,
9 products, and sectors, potentially including
10 computer and telecommunications hard-
11 ware, textiles, grains, cotton, and financial
12 services.

13 (iii) An examination of the role and
14 importance of intellectual property rights
15 issues, such as patents, copyrights, and li-
16 censing, in specific industries in China, in-
17 cluding the pharmaceutical industry, the
18 software industry, and the entertainment
19 industry.

20 (iv) An analysis of the effects on glob-
21 al commodity markets of China's growing
22 demand for energy and raw materials.

23 (v) An examination of whether or not
24 increased United States imports from
25 China reflect displacement of United

1 States imports from third countries or
 2 United States domestic production, and
 3 the role of intermediate and value-added
 4 goods processing in China's pattern of
 5 trade.

6 (2) REPORT.—Not later than one year after the
 7 date of the enactment of this Act, the United States
 8 International Trade Commission shall submit to the
 9 Committee on Ways and Means of the House of
 10 Representatives and the Committee on Finance of
 11 the Senate a report that contains the results of the
 12 study carried out under paragraph (1).

13 **SEC. 9. SENSE OF CONGRESS REGARDING EXPANSION OF**
 14 **MEMBERSHIP IN THE AGREEMENT ON GOV-**
 15 **ERNMENT PROCUREMENT OF THE WTO.**

16 (a) FINDINGS.—Congress finds the following:

17 (1) Nondiscriminatory, procompetitive, merit-
 18 based, and technology-neutral procurement of goods
 19 and services is essential so that governments can ac-
 20 quire the best goods to meet their needs for the best
 21 value.

22 (2) The Agreement on Government Procure-
 23 ment (GPA) of the World Trade Organization
 24 (WTO) provides a multilateral framework of rights
 25 and obligations founded on such principles.

1 (3) The United States is a member of the GPA,
2 along with Canada, the European Union (including
3 its 25 member States: Austria, Belgium, Cyprus, the
4 Czech Republic, Denmark, Estonia, Finland,
5 France, Germany, Greece, Hungary, Ireland, Italy,
6 Latvia, Lithuania, Luxemburg, Malta, the Nether-
7 lands, Poland, Portugal, Slovak Republic, Slovenia,
8 Spain, Sweden, and the United Kingdom), Hong
9 Kong, Iceland, Israel, Japan, Korea, Liechtenstein,
10 the Netherlands with respect to Aruba, Norway,
11 Singapore, and Switzerland.

12 (4) Albania, Bulgaria, Georgia, Jordan, the
13 Kyrgyz Republic, Moldova, Oman, Panama, and Tai-
14 wan are currently negotiating to accede to the GPA.

15 (5) The People's Republic of China joined the
16 WTO in December 2001, signaling to the inter-
17 national community its commitment to greater open-
18 ness.

19 (6) When China joined the WTO, it committed,
20 in its protocol of accession, to negotiate entry into
21 the GPA "as soon as possible".

22 (7) More than 3 years after its entry into the
23 WTO, China has not commenced negotiations to join
24 the GPA.

1 (8) Recent legal developments in China illus-
2 trate the importance and urgency of expanding
3 membership in the GPA.

4 (9) In 2002, China enacted a law on govern-
5 ment procurement that incorporates preferences for
6 domestic goods and services.

7 (10) The first sector for which the Chinese
8 Government has sought to implement the new gov-
9 ernment procurement law is computer software.

10 (11) In March 2005 the Chinese Government
11 released draft regulations governing the procurement
12 of computer software.

13 (12) The draft regulations require that non-
14 Chinese software companies meet conditions relating
15 to outsourcing of software development work to
16 China, technology transfer, and similar require-
17 ments, in order to be eligible to participate in the
18 Chinese Government market.

19 (13) As a result of the proposed regulations, it
20 appears likely that a very substantial amount of
21 American software will be excluded from the govern-
22 ment procurement process in China. The draft soft-
23 ware regulations threatened to close off a market
24 with a potential value of more than \$8 billion to
25 United States firms.

1 (14) United States software companies have
2 made a substantial commitment to the Chinese mar-
3 ket and have made a substantial contribution to the
4 development of China's software industry.

5 (15) The outright exclusion of substantial
6 amounts of software not of Chinese origin that is
7 apparently contemplated in the regulations is out of
8 step with domestic preferences that exist in the pro-
9 curement laws and practices of other WTO member
10 countries, including the United States.

11 (16) The draft regulations do not adhere to the
12 principles of nondiscriminatory, procompetitive,
13 merit-based, and technology-neutral procurement
14 embodied in the GPA.

15 (17) The software piracy rate in China has
16 never fallen below 90 percent over the past 10 years.

17 (18) Chinese Government entities represent a
18 very significant portion of the software market in
19 China that is not dominated by piracy.

20 (19) The combined effect of rampant software
21 piracy and the proposed discriminatory government
22 procurement regulations will be a nearly impen-
23 etrable barrier to market access for the United
24 States software industry in China.

1 (20) The United States trade deficit with China
2 in 2004 was \$162,000,000,000, the highest with any
3 economy in the world, and a 12.4 percent increase
4 over 2003.

5 (21) China's Premier, Wen Jiabao, has com-
6 mitted to rectify this serious imbalance by increasing
7 China's imports of goods and services from the
8 United States.

9 (22) The proposed software procurement regu-
10 lations that were described by the Chinese Govern-
11 ment in November 2004 incorporate policies that are
12 fully at odds with Premier Wen's commitment to in-
13 crease China's imports from the United States, and
14 will add significantly to the trade imbalance between
15 the United States and China.

16 (23) Once it is fully implemented, the discrimi-
17 natory aspects of China's government procurement
18 law will apply to all goods and services that the gov-
19 ernment procures.

20 (24) Other developing countries may follow the
21 lead of China.

22 (25) In July 2005, senior officials of the Chi-
23 nese Government announced at the U.S.-China Joint
24 Committee on Commerce and Trade that China
25 would accelerate its efforts to join the GPA and to-

1 ward this end will initiate technical consultations
2 with other WTO member countries and accordingly
3 delay issuing draft regulations on software procure-
4 ment, as it further considers public comments and
5 makes revisions in light of WTO rules.

6 (b) SENSE OF CONGRESS.—It is the sense of Con-
7 gress that—

8 (1) the Government of the United States should
9 strive to expand membership in the Agreement on
10 Government Procurement of the World Trade Orga-
11 nization (WTO);

12 (2) the Government of the United States should
13 ensure that the Government of the People’s Republic
14 of China meets its WTO obligations as recently af-
15 firmed through its commitment in July 2005
16 through the U.S.-China Joint Committee on Com-
17 merce and Trade, to join the WTO Agreement on
18 Government Procurement;

19 (3) the Government of the United States should
20 seek a commitment from the Government of the
21 People’s Republic of China to maintain its suspen-
22 sion of the implementation of its law on government
23 procurement, pending the conclusion of negotiations
24 to accede to the Agreement on Government Procure-
25 ment of the WTO;

1 (4) the Government of the United States should
2 seek commitments from the Government of the Peo-
3 ple’s Republic of China and other countries that are
4 not yet members of the Agreement on Government
5 Procurement of the WTO to implement the prin-
6 ciples of openness, transparency, fair competition
7 based on merit, nondiscrimination, and account-
8 ability in their government procurement as embodied
9 in that agreement; and

10 (5) the President should direct all appropriate
11 officials of the United States to raise these concerns
12 with appropriate officials of the People’s Republic of
13 China and other trading partners.

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